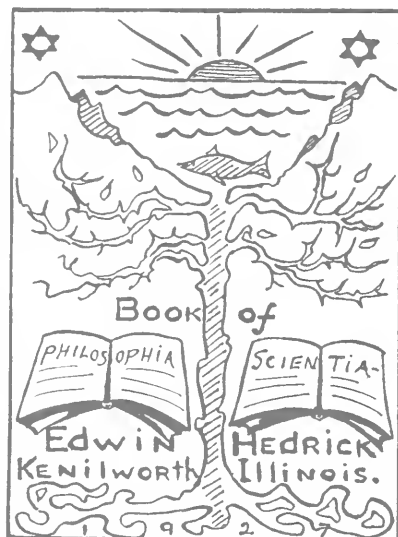


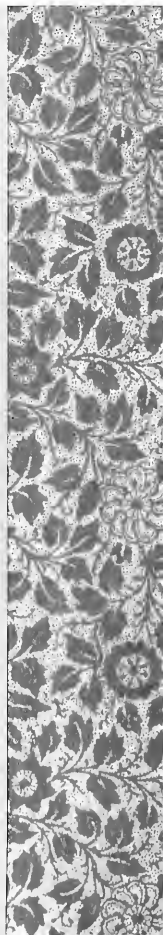
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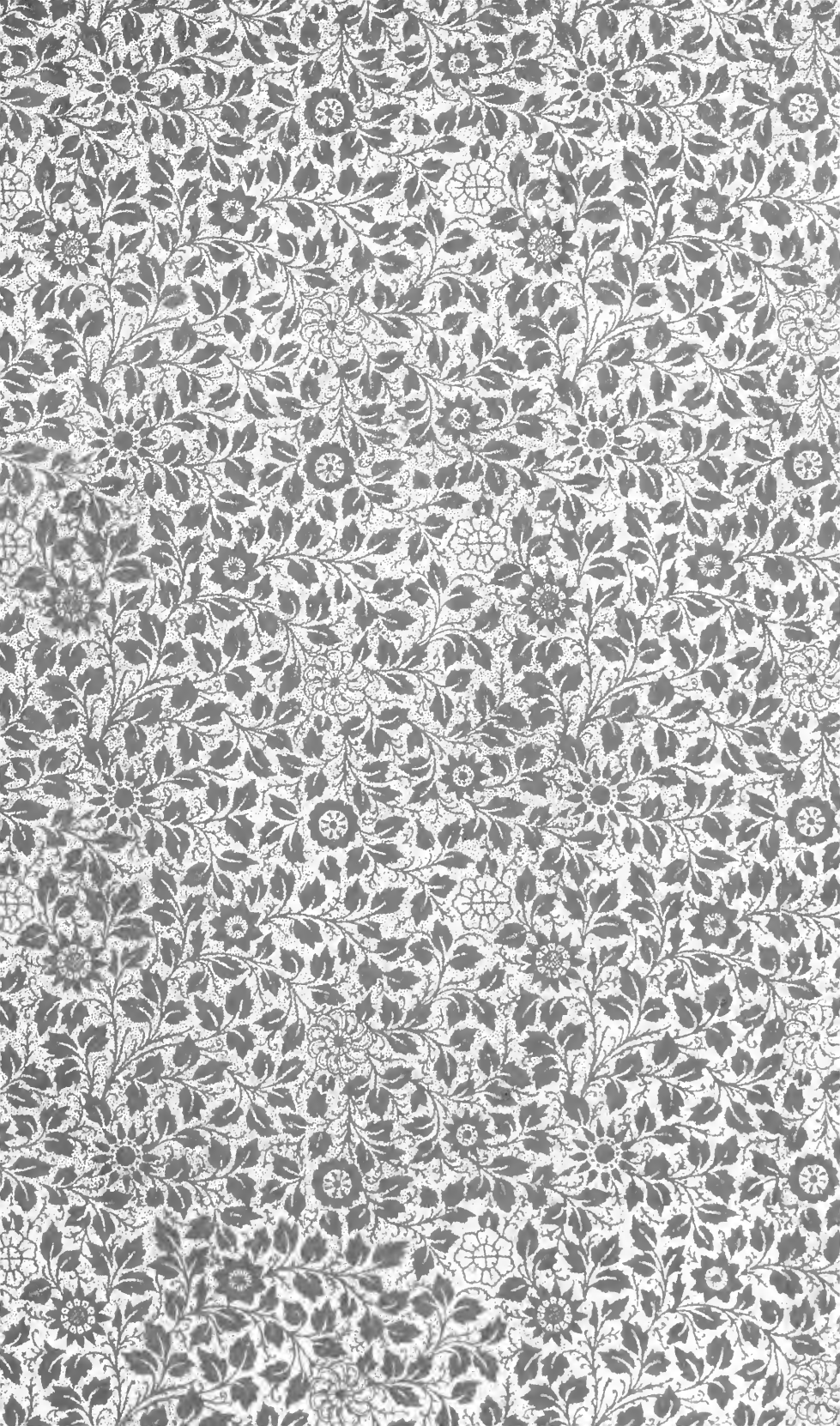


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Insanity in its Medico-Legal Relations.

OPINION

RELATIVE TO

THE TESTAMENTARY CAPACITY

OF THE LATE

JAMES C. JOHNSTON,

OF CHOWAN COUNTY, NORTH CAROLINA.

BY

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SECOND EDITION,

WITH AN APPENDIX CONTAINING THE MAIN POINTS OF JUDGE MERRI-
MON'S CHARGE TO THE JURY.

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PREFACE.

A SECOND edition of my Opinion in the Johnston Will Case having been called for, I have availed myself of the opportunity to append a synopsis of the very able and enlightened charge delivered to the jury by his Honor, Judge A. P. MERRIMON. The finding of the jury was adverse to the contestants; but it will be seen that the Judge sustains all the legal and scientific points upon which I have insisted in my view of the case.

I have not deemed it expedient to make any changes in the Opinion beyond correcting a few typographical errors of the first edition. For the very favorable criticisms which it has obtained from the medical and legal journals and distinguished members of both professions, I desire to return my sincere thanks.

WILLIAM A. HAMMOND.

162 WEST THIRTY-FOURTH ST., }
NEW YORK. }



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OPINION.

PART I.

JAMES C. JOHNSTON, of Chowan County, State of North Carolina, died in March, 1865, far advanced in years, leaving a will dated April 10th, 1863. By the terms of this instrument, his natural heirs are disinherited, and the whole of his large property is devised to persons not connected with him by blood or marriage, and for whom he had never previously evinced any particular esteem or regard.

The testator was unmarried, had inherited a large estate, was a gentleman of influence, culture, and high position in society, was possessed of a great deal of family pride, and had always lived in ease and comfort, managing his property by a general supervision, but giving no particular attention to the details connected with its administration. He was not at all of intemperate habits, nor addicted to excesses of any kind; on the contrary, he was inclined to seclusion, and up to the 17th of March, 1863, evidently took more pleasure in the society of his relations—some of whom lived in the same house with him—than he did in that of other persons. On that day he wrote a letter to a member of his family for whom he had always previously exhibited the greatest affection, and whom he

had brought up and educated as his son, dismissing him from his home, and forbidding him ever again to enter his dwelling. From that period to the day of his death, he continued to manifest the most decided aversion to him and others of his blood relations.

The instrument which it is now sought to establish as the last will and testament of James C. Johnston is contested by the heirs-at-law, and it is alleged by them that at the time of its execution the testator was not of sound and disposing mind, and that consequently he was legally incapable of making any valid disposition of his property.

In my opinion, these allegations are well founded. I am entirely satisfied, after a full consideration of such evidence, documents and statements as have been submitted for my examination, that on the 10th of April, 1863, the date of the will, and for some time previously and subsequently thereto, James C. Johnston, the testator, was not of sound and disposing mind, but was on the contrary, the subject of such a degree of mental derangement as to destroy his freedom of will, and consequently his testamentary capacity. The reasons which have induced me to form these conclusions are shown in the following pages.

Every medical witness who appears in a case involving the mental capacity or responsibility of an individual is expected to give a definition of insanity. It is extremely difficult to do this satisfactorily—to give such a meaning to the word as will cover all possible cases of deficiency or aberration in the mental faculties, and yet not include those instances of cerebral disease which cannot properly be classed under this head. Dr. John

Haslam,* who has written one of the most lucid treatises on insanity in the English language, and who was for many years one of the physicians to Bethlehem Hospital, confesses his inability to give a thoroughly comprehensive and yet a sufficiently exclusive definition of madness; and Dr. Prichard† frankly admits that it is better to give up the attempt to define insanity in general terms. Notwithstanding the reluctance of these and other medical authorities on the subject to formularize the phenomena of insanity, the attempt has frequently been made with more less approach to completeness. If the word can be even imperfectly defined in simple language, without conveying erroneous ideas, it is certainly advisable to make an effort in this direction.

According to Hoffbauer,‡ an individual is insane when the understanding is arrested or changed in its operations; when he is powerless to avail himself of his intellectual faculties, or to make known his wishes in a suitable manner.

This definition, though embracing all cases of insanity, is not satisfactory, for the reason that it is applicable to certain cerebral disorders which are not properly classed under this head. Among them may be mentioned apoplexy and concussion and compression of the brain.

Dr. Bucknill, in his *Essay on Criminal Lunacy*, defines insanity as “a condition of the mind in which a false action of conception or judgment, a defective power

* Observations on Madness and Melancholy, including Practical Remarks on those Diseases, &c. 2d Edition, London, 1809. p. 37.

† Article Insanity, in *Cyclopedia of Practical Medicine*.

‡ Untersuchungen ueber die Krankheiten der Seele. Halle, 1803. p. 11.

of the will, or an uncontrollable violence of the emotions and instincts, have separately or conjointly been produced by disease." This definition is a very excellent one, but still includes those diseases of the brain attended with unconsciousness, which are not insanity.

Dr. Guislain,* an eminent Belgian authority, says that "insanity is a morbid derangement of the mental faculties unattended by fever, and chronic in its character, which deprives man of the power of thinking and acting freely as regards his happiness, preservation, and responsibility."

The objections to this definition, in addition to the strictures applicable to the others given, are that insanity is not necessarily unaccompanied by fever, and that it is not always a chronic affection.

Drs. Bucknill and Tuke,† quoting from Maimon, say that "mental health consists in that state in which the will is free, and in which it can exercise its empire without any obstacle. Any condition different to this is a disease of the mind. And if it is asked, what is the will? it may be replied, according to the definition of Marc, that it is in health a moral faculty which originates, directs, prevents, or modifies the physical and moral acts which are submitted to it."

The late Professor Gilman, of this city, who had given a great deal of study to the subject of insanity, declares that the best definition he had been able to make is, that "Insanity is a disease of the brain by which the

* *Léçons sur les Phrenopathies.* t. i., p. 45.

† *A Manual of Psychological Medicine, &c.* London, 1858. p. 79.

freedom of the will is impaired.”* This has the advantage of being short, and of being to the point. Other diseases, however, are included in its terms.

It would be easy to go on and quote numerous other authorities on this point, but enough have been cited to show the general import which physicians give to the word Insanity. I will therefore dismiss the further consideration of this division of the subject, by stating that my own idea of insanity is, that it is a general or partial derangement of one or more faculties of the mind, which, whilst not abolishing consciousness, prevents freedom of mind or of action. I think this definition is sufficiently comprehensive, whilst at the same time it is not so sweeping as to include certain cerebral disorders which are never intended to be embraced under the term insanity.

One feature is common to all the definitions cited and to many others which could be adduced, and that is that the ability which all persons of sound mind possess to think and act freely, is destroyed during the continuance of insanity. This is a point which it is important should not be forgotten.

There have been many classifications made of the several manifestations of insanity. As is well known, mental disease appears under different characters, just as does the healthy mind, and it is necessary, both for medical and legal purposes, that the various phases should be well recognized. The arrangement of Esquirol† appears to me to fulfill the necessary requirements of simplicity

* The Relations of the Medical to the Legal Profession. p. 20.

† Des Maladies Mentales, t. i., p. 11. Paris, 1838.

and correctness better than any other ever made. It has stood for over thirty years without being improved, and though it is essential to remember that any classification of the kind must be more or less arbitrary, there are yet well-defined instances of all the species of insanity mentioned by this eminent authority in mental pathology. Occasionally, as do other diseases, such as pleurisy, pneumonia, gout and rheumatism, they run into one another, and form a compound affection, but even then we can generally separate them into their constituent elements. The following is Esquirol's classification :

1. **MELANCHOLIA.** Perversion of the understanding in regard to one object or a small number of objects, with the predominance of sadness or depression of mind.

2. **MONOMANIA.** Perversion of understanding limited to a single object or small number of objects, with predominance of mental excitement.

3. **MANIA.** A condition in which the perversion of understanding embraces all kinds of objects, and is accompanied with mental excitement.

4. **DEMENTIA.** A condition in which those affected are incapable of reasoning, from the fact that the organs of thought have lost their energy and the force necessary for performing their functions.

5. **IMBECILITY OR IDIOCY.** A condition in which the organs have never been sufficiently well conformed to permit those affected to reason correctly.

As Esquirol remarks, mental alienation may assume more than one of these forms, and several of them may

alternate with each other in the same individual. Thus, it is not uncommon to see monomania followed by mania, and this by dementia, or to find all these varieties appearing and disappearing, without any fixed order of sequence, within the space of a few days or even hours. This want of permanence in type has induced some physicians to reject all systems of classification, and to admit only one disease which masks itself under various forms. But as will be seen hereafter, there is no difficulty in grouping under separate heads the almost infinite number of phenomena which are manifested in insanity. It is important, however, not to forget that a blending of types does take place, and that the fact is one well recognized by all writers on insanity.

It is not my intention to enter upon the consideration of all the varieties of insanity to which mankind are subject. The phenomena which were manifested in the case of James C. Johnston were of such a well-defined character that it is very easy to collect them together under their proper designation—monomania—and to show that the effect produced upon his mind was such as to destroy the freedom of his will, and hence to render him insane, and incompetent to make a valid testament. I propose, therefore, to discuss at length the symptoms and varieties of monomania, so far as they are clearly applicable to the case in question, and then to apply the principles elucidated to the subject at issue.

As has been shown, Esquirol defines monomania as an affection of the mind, in which the perversion of the intellect is limited to a single object or small number of objects, with a predominance of mental excitement.

When he comes to consider this form of insanity at length, he describes it* as a chronic cerebral affection without fever, and characterized by a partial derangement of the intelligence, the affections or the will. The intellectual disorder is concentrated on one object or a circumscribed series of objects. The patient sets out from a false principle, from which, however, he reasons correctly, and from which he draws the legitimate conclusions which modify his affections or the actions of his will. Aside from this partial perversion of the understanding, he feels, acts, and reasons as does a sane person. The illusions, hallucinations, vicious associations of ideas, and false, erroneous, and whimsical convictions are the basis of that perversion of the intelligence which Esquirol calls intellectual monomania.

Sometimes monomaniacs are not affected with intellectual derangement, but their affections—their characters are perverted. By plausible motives and by well-reasoned arguments, they seek to justify the actual state of their sentiments, and to excuse their strange and extraordinary conduct. Esquirol calls this variety affective monomania; others term it reasoning mania. When the will is without power to control the other faculties of the mind; when the patient commits acts which neither his judgment nor his feelings approve; when his conscience reproaches him for conduct which his will is powerless to prevent—in fact, when his actions are involuntary, instinctive, and irresistible, he is said by Esquirol to labor under monomania without delirium, or instinctive monomania.

* Des Maladies Mentales, t. i., p. 332.

For the last-mentioned form of mental derangement Prichard invented the name Moral Insanity. Certainly, no term in the whole range of psychological medicine has given rise to more trouble and misunderstanding than this. Bucknill and Tuke* consider it under the designation of Emotional Insanity.

It is very doubtful if the moral faculties of the mind can be deranged without the intellectual participating in the disorder. Although such aberration may not be apparent to superficial observers, close and patient examination will generally reveal its existence. In the work already cited, Bucknill and Tuke† state that “monomania, or partial insanity, is characterized by some particular illusion or erroneous conviction imposed upon the understanding, and giving rise to a partial aberration of judgment; the individual affected is rendered incapable of thinking correctly on subjects connected with the particular illusion, while in other respects he betrays no palpable disorder of the mind.”

Marcé,‡ one of the physicians to the great insane asylum at Paris, the Bicetre, thus remarks concerning monomania:

“When the partial derangement of the intellect is organized and systematized, it presents a desperate degree of tenacity. The patient interprets every word, every action, even the most insignificant, in the sense of his false conceptions. It is vain to argue with him, vain to

* A Manual of Psychological Medicine, &c. London, 1858. p. 178.

† Page 123.

‡ *Traité Pratique des Maladies Mentales*. Paris, 1862. p. 360.

endeavor to convince him of his errors. The monomaniac resists, and shelters himself behind his convictions with unshaken confidence in their truth. He may possibly for the moment be compelled to admit that his enemies are imaginary, that the person he has suspected is, on the contrary, his dearest friend, that an invention which has absorbed his intelligence is incapable of realization, he may make the most solemn and formal promises, but an hour afterward the inquietudes, the hesitations, the convictions re-appear.

Georget,* another eminent French writer on insanity, in treating of monomania, says: "Sometimes there exists only a single idea or series of dominant ideas. Sometimes the patient exhibits only a slight degree of mania or dementia, which does not prevent him fixing his attention on the objects with which his mind is struck, and reasoning from them as he would have done formerly. There are even some patients whose reason is not at all deranged, and in whom only a more or less profound diversion of the sentiments and affections is to be observed, accompanied neither by marked agitation nor maniacal excitement, or there may be an habitual state of agitation, anger, transport, and sometimes even of maniacal excitement, but *without injury to the judgment—without intellectual derangement*. If one converses with such patients on subjects not connected with the morbid portion of their mental state, in general, no difference between them and other persons will be perceived. Not only do

* Discussion Medico-Légale sur la Folie ou Aliénation Mentale. Paris, 1826. p. 10.

they make use of ordinary knowledge, but they are able to acquire new facts and new reasonings. Moreover, they preserve so correct a notion of good and of evil, of justice and injustice, and of social observances, that whenever they forget their moral sufferings and their illusions, they conduct themselves in society as well as other people.

“Nevertheless, these subjects of insanity, in appearance so rational in all the relations of life, have ordinarily committed a number of extravagances which have necessitated their confinement in an asylum, and the most skillful physician cannot predict in what manner they will act—that they will not enter into engagements most prejudicial to their interests, or perpetrate the most reprehensible acts.”

Taylor,* whilst contending against the existence of moral insanity without derangement of the intellectual faculties of the mind, refers to a mania without delirium, which appears “in the shape of a causeless suspicion, jealousy or hatred of others, especially of those to whom the affected person ought to be attached.”

Dr. Wood,† in the course of his remarks relating to insanity, says:

“Another form of moral insanity is that of excessive irascibility. The least opposition is apt to throw the patient into ungovernable rage, driving him to the com-

* A Manual of Medical Jurisprudence. Sixth American Edition, with notes, &c. By Clement B. Penrose, of the Philadelphia Bar. Philadelphia, 1866. p. 631.

† A Treatise on the Practice of Medicine. Philadelphia, 1866. Vol. 2, p. 802.

mission of acts of which in his cooler moments he repents. A regard for public opinion or the fear of personal consequences will often be sufficient to control the expression of these feelings; but when no such restraint exists, they are allowed full sway, and the patient seems to take an insane delight in their indulgence. To abuse or even strike a friend, parent or other near relative or friend, to curse and revile, to pour out torrents of reproaches and accusations without foundation, and, when there is powerlessness at the same time, to scream and roar and use all kinds of frantic gestures, in the violence of impotent rage, are among the acts of persons affected with this form of insanity; but toward the world at large their conduct may be irreproachable, and though often willing to admit themselves in the wrong to the objects of their excitement, they find plausible excuses which deceive the multitude, and sometimes make themselves appear to be persecuted individuals."

And again :

"It is a singular fact that, although quite confident of the truth of his insane notions, the monomaniac not unfrequently either has some imperfect consciousness of his want of sanity, or, what is more probable, is able to appreciate the opinions which others would be apt to entertain of it were the real state of his convictions made known. Hence, he will frequently conceal it carefully from the knowledge of others, and when at length his delusion has become so intense as quite to have got the mastery over his judgment, it will be found that he has long secretly cherished this insane notion while mingling unsuspected in the world."

M. Baillarger, * the leading French authority of the present day upon insanity, says :

“There exists a very great number of cases in which the perversion of intellect is limited to one idea or series of ideas, always the same. Often this perversion exists without being suspected, and does not involve any disorder. Without the confession of the patient, one would know nothing of his struggles against an idea which has finally mastered him. Suicide is thus in many cases the first manifestation of an interior combat which nothing had previously revealed.”

M. Dagonet,† physician in chief of the insane asylum at Stephansfeld, France, says of the monomaniac :

“He is of an excessive susceptibility : the least obstacle, the slightest contradiction develops his irritability to the highest degree, and gives rise to an excess of agitation almost equal to that witnessed in the true maniac.

“The moral sense, and above all the sentiments of affection, are deeply perverted. If such patients have not conceived a profound antipathy to persons who were formerly most dear to them, they at least manifest the most supreme indifference toward them. They do not hesitate for an instant to sacrifice friends, relatives, or acquaintances to the ideas which preoccupy them.”

M. Dagonet ‡ again refers to these phenomena of the monomaniacal state, in his resumé of symptoms :

* Annales Médico Psychologiques, 1846, pp. 8, et seq.

† Traité Elementaire et Pratique des Maladies Mentales. Paris, 1862. p. 377.

‡ Op. cit., p. 384.

“The moral sense is almost always vitiated to an extreme degree; the feeling of affection amounts to nothing; there is not only a complete indifference toward persons he formerly loved, but frequently a profound aversion is shown for them.

“The consciousness of the patient becomes entirely changed. He never has any doubt of the reality of his erroneous convictions. He is afflicted with a partial perversion of the intellect, more or less restrained in its manifestations, but always characteristic. Aside from this derangement, he preserves a remarkable degree of exactness in his ideas and of apparent integrity of his faculties.

Pinel * says of monomaniacs that “their attachments give way to feelings of repugnance or hatred. They exaggerate every sensation, especially those of an unpleasant character, and interpret the most harmless actions as being intended to injure them.”

In treating of the same subject, Prichard † declares that “the social affections are either obliterated or perverted.”

Sir W. C. Ellis, ‡ M. D., resident superintendent of the insane asylum at Wakefield, England, in describing some of the more prominent symptoms of insanity, says:

“Another circumstance of a very painful character is frequently attendant upon insanity, and, as far as I know,

* *Physiologie de l'Homme Aliéné*, &c. Paris, 1833. p. 39.

† *On the Different Forms of Insanity in Relation to Medical Jurisprudence*, &c. London, 1842. p. 69.

‡ *A Treatise on the Nature, Symptoms, Causes and Treatment of Insanity*. London. p. 127.

no attempt has been made to account for it. I am referring to the change which takes place in the affections toward those to whom the patients have formerly been most attached. This change generally takes place in those cases where the patients themselves are quite unconscious of the existence of any disorder, and where it has come on by slow degrees and is only very partial in its effects."

My own experience in the observation of monomania has been such as to entirely confirm the views of this affection which I have cited from other authors. I have generally noticed that before showing the assumption of an erroneous idea, the patient had exhibited symptoms of cerebral excitement, often resembling mania in their character and violence. These would appear in paroxysms, and upon their cessation a state of apparent sanity would be resumed. Close study of the condition of such patients would show, however, that this seeming restoration to health was far from being a reality. There was a nervousness, an excitability, a morbid restlessness, which gave certain evidence that a change had taken place in the cerebral organization. Very soon the moral faculties of the mind would become perverted. From having been neat and cleanly in their habits, some patients became insufferably dirty and offensive. Others acquired likes and dislikes in direct opposition to those which had prevailed during their sanity, not only as regarded individuals, but sometimes as related to books, articles of dress, of food, &c. The indifference and often dislike toward friends and relatives, which all authorities on this disease refer to as a prominent feature, has almost invariably

formed a striking characteristic. Indeed, one of the most common delusions under which monomaniacs labor is that their friends have insulted or injured them in a manner which precludes forgiveness. Such a symptom occurring in a person, even though he may not be hereditarily predisposed to insanity, is always a matter of grave import. When it exists in conjunction with occasional attacks of acute delirium, when attempts at self-destruction have been made, and, above all, when it is itself the exciting impulse to an act which affords, when separated from all others, ground for suspecting the existence of insanity, no room for doubt remains that an individual affected in this manner is not of sound and disposing mind.

I recollect very well the particulars of a case which came under my own immediate notice. A gentleman, a widower, lived upon terms of great affection in the same house with his sister, who managed his establishment for him. For several years they had lived together without anything occurring to disturb the sincere attachment which existed between them. He was as careful as possible to provide for all her wants, and exhibited a tenderness and love toward her which were noticeable to all with whom they were thrown in contact.

One morning at breakfast, without any premonitory indications of a change in his conduct having been observed, he removed his boots, took off his coat, and seated himself at the table in this condition. His sister, surprised at these acts in one who had always been remarkably punctilious in all his social observances, inquired his reasons for such strange behavior, and made some laughing remark on the subject. He gave no answer, but,

jumping up from his chair, began to swear and curse in the most violent manner. Becoming alarmed for her personal safety, she made her escape from the room, and sent for the family physician. Gradually, however, her fears abated, and approaching the door and hearing no noise within, she entered the room. To her great astonishment, she found her brother, properly clothed, seated at the table as if nothing had happened, and waiting for her to pour out his coffee for him. At first he appeared to be in entire ignorance of his singular conduct, but at last he admitted that he believed he had taken off his coat and boots, and sworn a little. He excused himself by saying that his feet hurt him, and that he had felt very warm.

Nothing further evidencing any mental derangement took place, till she began to notice a change in his demeanor toward her. He found fault with her personal appearance, said she arranged her hair badly, that her dresses were unbecoming, and that she was awkward in her movements. Then he accused her of neglecting the household, declared she was ruining him with her extravagance, that her conduct toward him was disrespectful and insulting, and that if she did not amend her ways he should be forced to send her out of his house.

She bore all his unkindness with great patience, and tried to convince him of the erroneous character of his impressions. But she might as well have attempted to change the course of the sun. His delusions had become fixed as a part of his mental being, and all efforts made to dissipate them only served to plant them deeper in his mind. Finally it became very obvious that he had ac-

quired a decided aversion to her, and at last so hateful had the very sight of her become to him that he ordered her to leave the house, giving her but three days in which to make her preparations for departure. Before she left his residence he had another attack of delirium, which lasted several hours, and in which he made several attempts to cut his throat. Not till the occurrence of this second paroxysm did she have any idea that his conduct toward her was the result of insanity. After it passed off, she spoke of his condition to other relatives, but no action was taken in regard to putting him into an asylum. The day subsequently to this attack he came home with a common woman, whom he installed as housekeeper, and his sister took her departure.

Up to this period there had been no interruption in his business operations. In the interval between the two attacks of delirium, his mind, except as regarded his sister, gave no evidence whatever of aberration. In all his relations with others he was as kind and considerate as he had ever been, and showed no diminution in his ability to manage all the details of his extensive mercantile transactions.

Soon after dismissing his sister from his establishment, he made a will in favor of the woman whom he had introduced as his housekeeper. This will he read to me. It was perfectly correct in form and detail, and he conversed about it in an entirely lucid and logical manner. He said that it had always been his intention to leave his property to his sister; but that she had behaved so badly toward him, that he was determined to cut her off altogether. I endeavored, but in vain, to dissuade him from this purpose.

He would not listen to argument, and the more I tried to convince him of the erroneous character of his convictions and of the great wrong he was perpetrating, the more obstinately he seemed determined to carry out his design; and finally he accused his sister of sending me to him, to induce him to change his will. As I did not believe him to be of sound and disposing mind, I refused to witness this document, and the servant whom he summoned likewise, at my suggestion, declined to attest it. He evinced no surprise at these refusals. On the contrary, he declared that they were just what he had expected, and that we were all in league with his sister to prevent him disposing of his property as he chose.

During the whole course of this interview, and in many others which I had with him before and after this event, I failed entirely to discover any sign of mental derangement, except so far as related to his sister. On every other topic of conversation his opinions were such as showed that he possessed a sound and discriminating judgment, and his reasoning was such as would have convinced any one, unacquainted with his delusion, of the perfect integrity of his mental faculties. Even as regarded his sister, there was no error in his intellectual processes. His premises were indeed false, but the arguments he based upon them and the deductions he drew from them were thoroughly logical. Certainly if she had been the character he represented her to be, and had really been guilty of the conduct toward him of which he accused her, his aversion would have been perfectly natural. Previously to his third attack of delirium, the severest charge he had made against his sister involved nothing of a crim-

inal nature. He never went farther than to accuse her of a want of respect, of superciliousness and extravagant conduct, and of neglecting his comfort. After this last paroxysm, however, he told me one morning, in a very confidential manner, that she had made two unsuccessful attempts to poison him. A few weeks subsequently to this attack, he died suddenly of pneumonia. His will was found after his death, written in his own handwriting, but neither signed nor witnessed. It bequeathed all his estate to his housekeeper.

In this case there were

1. Occasional paroxysms of delirium;
2. A change in the feeling of affection he had always entertained for his sister;
3. Delusions in regard to the conduct of his sister toward him;
4. The desire to punish her by excluding her from her inheritance.

There can scarcely be a doubt that had a will been executed under these circumstances, it would have been pronounced null and void by any competent legal tribunal in the country; the first element requisite for testamentary capacity, saneness of mind, was absent. The freedom of the will was destroyed so far as the patient's sister was concerned, for where there is delusion there is no liberty to act otherwise than as that delusion requires.

The Greenwood case, though familiar to most lawyers, is so apposite to the matter under notice, that I am

induced to refer specifically to it. I quote from Dr. Ray : *

“Mr. Greenwood was bred to the bar, and acted as chairman of the quarter sessions, but becoming diseased, and receiving, in a fever, a draught from the hand of his brother, the delirium taking its ground then, connected itself with that idea ; and he considered his brother as having given him a potion with a view to destroy him. He recovered in all other respects, but that morbid image never departed, and that idea appeared connected with the will by which he disinherited his brother. Nevertheless, it was considered so necessary to have some precise rule, that though a verdict had been obtained in the Common Pleas against the will, the judge strongly advised the jury to find the other way, and they did accordingly find in favor of the will. Further proceedings took place afterward, and concluded in a compromise. No one would be hardy enough to affirm that Greenwood’s mind was perfectly rational and sound, and as his insanity displayed itself on all topics relating to his brother, every act invading his brother’s interest, to go no further, ought consequently to have been invalidated. A plainer case cannot well be imagined.”

A question which is important in its bearings on the case at issue is : Can an insane person, and especially a monomaniac, control the paroxysms of delirium to which he is subject, or conceal the particular manifestation of his insanity ?

* A Treatise on the Medical Jurisprudence of Insanity. 4th Edition. Boston, 1860. p. 265.

To this interrogatory, I unhesitatingly reply in the affirmative. The feature is one distinctly recognized by all writers on the subject. Thus Haslam* says of insane persons :

“They have sometimes such a high degree of control over their minds, that when they have any particular purpose to carry they will affect to renounce their opinions which shall have been judged inconsistent, and it is well known that they have often dissembled their resentment until a favorable opportunity has occurred of gratifying their revenge.

“Of this restraint which madmen have sometimes the power of imposing on their opinions, the remark has been so frequent, that those who are more immediately about their persons have termed it, in their rude phrase, ‘*stifling their disorder.*’

“Among the numerous instances of this cunning and dissimulation which I have witnessed in insane persons, the relation of one case will be sufficient to exemplify the subject :

“An Essex farmer, about the middle age, had on one occasion so completely masked his disorder, that I was induced to suppose him well when he was quite otherwise. He had not been at home many hours before his derangement was discernible by all those who came to congratulate him on the recovery of his reason. His impetuosity and mischievous disposition daily increasing, he was sent to a private madhouse, there being at that time no vacancy in the hospital. Almost from the moment of

* Observations on Madness, &c. London, 1809. p. 53.

his confinement, he became tranquil and orderly, but remonstrated on the injustice of his seclusion.

“Having once deceived me, he wished much that my opinion should be taken respecting the state of his intellect, and assured his friends that he would submit to my determination. I had taken care to be well prepared for this interview by obtaining an accurate account of the manner in which he had conducted himself. At this examination, he managed himself with admirable address. He spoke of the treatment he had received from the persons under whose care he was then placed as most kind and fatherly; he also expressed himself as particularly fortunate in being under my care, and bestowed many handsome compliments on my skill in treating this disorder, and expatiated on my sagacity in perceiving the slightest tinges of insanity. When I wished him to explain certain parts of his conduct, and particularly some extravagant opinions respecting certain persons and circumstances, he disclaimed all knowledge of such circumstances, and felt himself hurt that my mind should have been poisoned so much to his prejudice. He displayed equal subtility on three other occasions when I visited him; although, by protracting the conversation, he let fall sufficient to satisfy my mind that he was a madman. In a short time he was removed to the hospital, where he expressed great satisfaction in being under my inspection. The private madhouse which he had previously so much commended now became the subject of severe animadversion; he said that he had there been treated with extreme cruelty, that he had been nearly starved and eaten up by vermin of various descriptions. On inquiring of some conva-

lescent patients, I found (as I had suspected) that I was as much the object of abuse when absent as any of his supposed enemies ; although to my face his behavior was courteous and respectful. More than a month had elapsed since his admission to the hospital before he pressed me for my opinion ; probably confiding in his address and hoping to deceive me. At length he appealed to my decision and urged the correctness of his conduct during confinement as an argument for his liberation. But when I informed him of the circumstances he supposed me unacquainted with, and assured him he was a proper subject for the asylum where he then inhabited, he suddenly poured forth a torrent of abuse, talked in the most incoherent manner, insisted on the truth of what he had formerly denied, breathed vengeance against his family and friends, and became so outrageous that it was necessary to order him to be strictly confined. He continued in a state of unceasing fury for more than fifteen months."

In regard to this point, Dr. Forbes Winslow * says :

"The power of concealing delusions which confessed and even dangerous lunatics have been known to possess, when under the strictest and most searching examination, has often astonished persons unaccustomed to deal with them and not fully acquainted with the subtle phenomena of insanity. The illustrious Lord Erskine observes, in one of his most able and eloquent speeches, that in all the cases which have filled Westminster Hall with the most complicated considerations, the lunatics and other

* On Obscure Diseases of the Brain and Disorders of the Mind, &c. London, 1860. p. 280.

insane persons who have been the subjects of them have not only had the most perfect knowledge and recollection of all the relations they stood in toward others, and of the acts and circumstances of their lives, but have in general been remarkable for subtilty and acuteness. These are the cases which frequently mock the wisdom of the wisest in judicial trials; because such persons often reason with a subtilty which puts in the shade the ordinary conceptions of mankind; their conclusions are just and frequently profound; but the premises from which they reason, when within the range of the malady, are uniformly false—not false from any defect of knowledge or judgment, because a delusive image, the inseparable companion of real insanity, is thrust upon the subjugated understanding, incapable of resistance because unconscious of attack.”

Dr. Winslow then states the following case in illustration of these remarks:

“Some years ago I had under my care a young gentleman who had tried, on more than one occasion, to murder his sister, when under the delusion that she had prevented, by her unjustifiable interference, his marrying a lady of large property and of high rank. The idea was altogether an insane one. For nearly a year this notion was never absent from his mind. He never manifested other symptoms of mental derangement. Eventually the delusion with regard to the sister appeared to have been removed from his imagination. I spoke frequently to him on the subject, and he declared that his impressions with regard to his sister no longer existed. He once observed: ‘I wish to see my dear sister, for the purpose

of craving her forgiveness for permitting such bad thoughts to enter my mind.' To all appearance he seemed to be restored to mental health, or at least to be convalescent, yet I had (from a variety of trifling circumstances when viewed by themselves) my doubts and misgivings as to the *bona fide* character of his apparent recovery. For more than a week his mind, he alleged, was free from delusion. I called one day to see him, and placed myself in such a position that I could closely observe his conduct and hear his conversation without his being aware of my presence. When I first saw him he was reading. In about ten minutes he left the sofa where he was sitting, and approached toward the looking-glass. He gazed fixedly at himself for a few minutes. He then began, whilst in this position, to indulge in the most malignant grins. At last he clenched his fists, and walked about the room in an agitated manner, exclaiming: 'The villain! the miscreant! the viper! the snake in the grass! I'll do for her on the first opportunity!' I was now satisfied that the lunatic had been playing an artful part for a purpose, and that he was still in a dangerous state of insanity. I did not converse with him on this occasion, but did so on the following day, when, strange to say, he persisted in declaring that he had no delusions with regard to his sister or any member of the family. I made no reference to what I had observed on the previous day, and being convinced, in the course of a week, that it was not my intention to allow him to be at large, he threw off his disguise, and his insanity then became evident to every person who approached him."

Georget * says, relative to this power of the insane to control themselves :

“The delirium is sometimes so well restrained and the intelligence is sometimes so free under almost all connections, that the patient appears to be in perfect mental health, so long as he does not direct his attention to the object upon which he is deranged. This fact is certainly remarkable, for the patient, knowing that the ideas which he thinks correct are regarded by others as ridiculous, and are likely to prejudice him in the estimation of persons with whom he is thrown, preserves sufficient empire over himself to effectually conceal them.”

Leuret † writes that :

“Insane persons are sometimes met with whose actions and words are entirely rational, and who give no evidence of derangement except in their writings, and others who take the utmost care to conceal those of their ideas which they have been told are erroneous.

M. Pinel, ‡ nephew of the eminent psychologist who has done so much toward extending our knowledge of mental diseases, and Director of the *Maison de Santé* of the Chateau of St. James, in France, writes thus in his valuable monograph on monomania :

“M. Ferrus, charged by justice to inquire into the mental condition of a patient of my establishment, came frequently during six months without being able to make

* Dictionnaire de Médecine, 1re Ed., Art. Folie, p. 233.

† Annales d'Hygiène, 1829, t. 1.

‡ De la Monomanie Considérée sous le Rapport Psychologique Médical et Légal. Paris, 1856. p. 36.

out his report. During all his long visits, the monomaniac comported himself in such a manner as to make it doubtful whether he was or was not insane. He either replied to questions with perfect lucidity, or else he evaded with address and politeness those which it would have been embarrassing to him to answer. His countenance, his gestures, his physiognomy, his dress, presented nothing at all out of the way. M. Ferrus tried every means to ascertain the character of his partial derangement. Various traps were laid for him; he was drawn into conversation without suspecting that our honorable *confrere* was in an adjoining room, from which he could hear every word that was spoken. M. Ferrus gave him a biscuit to eat which had been soaked in wine, into which a little sugar had been put, telling him, at the same time, that his wife had sent it to him. None of these means however, was sufficient to cause him to betray the existence of one or several insane ideas. And yet this patient was a monomaniac, who had endeavored to kill his wife, and had then tried to destroy himself. He had imagined, ever since the trial of Madame Lafarge, that his wife had poisoned him and was attempting to do so again. He imagined that the body linen sent to him by her contained poisonous substances, such as belladonna and arsenic. He declared that he had surprised her reading Barbier's *Materia Medica*, which her physician had secretly sent her, and that his bed was often covered with a metallic powder. Aside from this fixed idea, which he did not always express, which he made known with reserve and to certain persons only, which he concealed with great skill, denying it to most people, even to those to whom

he had the day before confessed it, especially if others were present, he spoke and acted in a rational manner.

“It was not till some time after his entrance into the asylum that he took me into his confidence and urged the insane ideas which he had denied in presence of M. Ferrus.”

Many instances of the power of insane persons to control their ravings and conceal their delusions and antipathies have come under my notice. Often have I seen those who were manifesting the most striking evidences of delirium become perfectly calm on the approach of the superintendent or other officer of the asylum, and enter into conversation with him as if the tranquility of their minds had never been disturbed. I am acquainted with a gentleman in private life who has never been in an asylum, and yet who is subject to periodical attacks of mania, and who is constantly under the delusion that he has lost all his property and is very poor. He has frequently conversed with me in regard to his paroxysms, and has often spoken of his ability to control them. He informed me once that he could always stop them by urinating, but that he was frequently so situated when he felt them coming on, that a regard for the proprieties of life would not permit him to avail himself of this means; still, as he admitted, and as I have several times witnessed, he was occasionally able to prevent them by the mere exercise of his will. His delusion, however, is always present; he is apprehensive that he will die in the almshouse, and though really possessed of a considerable property, refuses to make a will on the ground that he is an out-door pauper, supported at the public expense.

Another, a lady, has recently come under my professional charge, who has attacks of semi-delirium at each menstrual period, over which she is able to exercise a complete control provided she chooses to do so. She is also subject to the delusion that she is a clock, and that if she is not wound up every eight days she will run down and die. The winding up consists in sexual intercourse, which she will not permit her husband to have with her except at the stated times necessary to keep her going, and then she insists with much vehemence on his performing his marital duties. Although I saw this lady regularly every day for several weeks, I was unaware of the existence of her insane idea, and should not have known it as soon as I did had I not been informed of it by her husband. Even after the fact came to my knowledge, I was unable, though often leading the conversation to clocks and using other leading suggestions, to obtain from her the slightest evidence of the existence of any monomaniacal symptom. Only a few days ago, however, on entering her room, I found her drawing a representation of a dial on her abdomen; she had mistaken my knock for her husband's, and was of course very much confused when she discovered her mistake. She at once admitted that she was a clock, but the next day persisted, as she has ever since, in denying that she had any such idea, although it is very evident that the notion is never absent from her mind.

This lady converses perfectly well and rationally upon all topics, and aside from her attacks of delirium, gives no evidence of insanity which the most acute and systematic course of cross-examination could detect. To her

husband, however, she talks scarcely of anything else but her delusion.

The division of the subject just under discussion, leads naturally to the important question of Lucid Intervals. Whilst I doubt the existence of lucid intervals in any form of insanity, I am very sure they form no part of the course of monomania. In the first place, I shall give the opinions of some of the most eminent authorities on this point, and shall then state some of the facts occurring in my own experience, with the views to which they have led me.

Haslam,* whom I have already quoted, and whose opinion upon any question relating to insanity should always be treated with great respect, says :

“Madmen do not always continue in the same furious or depressed state ; the maniacal paroxysm abates its violence, and some hours of hope occasionally cheer the despondency of the melancholic patients. We have in the hospital some unfortunate persons who are obliged to be secured the greater part of their time, and who now and then become calm and to a certain degree rational ; upon such occasions they are allowed a greater range, and are admitted to associate with the others. In some instances, the degree of rationality is more considerable ; they conduct themselves with propriety, and in a short conversation will appear sensible and coherent. Such remission has been generally termed a *lucid interval*.

“When medical persons are called upon to attend a commission of lunacy they are always asked whether the

* Op. cit., p. 44.

patient has had a *lucid interval*. A term of such latitude as interval requires to be explained in the most perspicuous and accurate manner. In common language it is made to signify both a moment and a number of years ; consequently, it does not comprise any stated time. The term *lucid interval* is therefore relative. As the law requires a precise development of opinion, I should define a *lucid interval* to be a complete recovery of the patient's intellect, ascertained by repeated examinations of his conversation and by constant observation of his conduct, for a time sufficient to enable the superintendent to form a correct judgment. Unthinking people are frequently led to conclude that if, during a short conversation, a person under confinement shall betray nothing absurd or incorrect, he is well, and often remonstrate on the injustice of restricting him from the world. Even in common society there are many persons whom we never suspect, from a few trifling topics of discussion, to be shallow-minded ; but if we start a subject and wish to discuss it through all its ramifications and dependencies, we find them incapable of pursuing a connected chain of reasoning. In the same manner insane people will often for a short time conduct themselves, both in conversation and behavior, with such propriety that they appear to have the just exercise and direction of their faculties ; but let the examiner protract the discourse until the favorite subject shall have got afloat in the madman's brain, and he will be convinced of the hastiness of his decision. To those unaccustomed to insane people, a few coherent sentences or rational answers would indicate a lucid interval, because they discovered no madness ; but he who is in

possession of the peculiar turn of the patient's thoughts might lead him to disclose them, or by a continuance of the conversation they would spontaneously break forth."

After quoting an instance of well-portrayed insanity from Dr. Johnson's *Rasselas*, Dr. Haslam continues :

"A real case came under my observation some years ago, and which is equally apposite to the subject. A young man had become insane from habitual intoxication, and during the violence of his disorder had attempted to destroy himself. Under a supposed imputation of having unnatural propensities, he had amputated his penis, with a view of precluding any future insinuations of that nature. For several months after he was admitted into the hospital he continued in a state which obliged him to be strictly confined, as he constantly meditated his own destruction. On a sudden he became apparently well, was highly sensible of the delusion under which he labored, and conversed as any other person on the ordinary topics of discourse. There was, however, something in the reserve of his manner and peculiarity of his look which persuaded me he was not well, although no incoherence could be detected in his conversation. I had observed him for some days to walk rather lame, and once or twice had noticed him sitting with his shoes off, rubbing his feet. On inquiring into the motives of his doing so, he replied that his feet were blistered, and wished that some remedy might be applied to remove the vesications. When I requested to look at his feet, he declined it, and prevaricated, saying they were only tender and uncomfortable. In a few days afterward he assured me they were perfectly well. The next evening I observed

him, unperceived, still rubbing his feet, and then peremptorily insisted on examining them; they were quite free from any disorder. He now told me with some embarrassment, that he wished much for a confidential friend, to whom he might impart a secret of importance. Upon assuring him that he might trust me, he said that the boards on which he walked (the second story) were heated by subterraneous fires, under the direction of invisible and malicious agents, whose intentions, he was well convinced were to consume him by degrees.

“From these considerations, I am inclined to think that a *lucid interval* includes all the circumstances which I have enumerated in my definition of it. If the person who is to examine the state of the patient’s mind be unacquainted with his peculiar opinions, he may be easily deceived; because wanting this information, he will have no clue to direct his inquiries, and madmen do not always nor immediately intrude their incoherent notions.”

In another work * the same author returns to this subject, and reiterates in still stronger language his opinion relative to the non-existence of lucid intervals in insanity. Thus he says:

“As a constant observer of this disease for more than twenty-five years, I cannot affirm that the lunatics with whom I have had daily intercourse have manifested those alternations of insanity and reason. They may at intervals become more tranquil and less disposed to obtrude their distempered fancies into notice—for a time their minds

* Medical Jurisprudence as it relates to Insanity, according to the Law of England. London, 1817. p. 102.

may be less active, and the succession of their thoughts consequently more deliberate—they may endeavor to effect some desirable purpose, and artfully conceal their real opinions, but they have not abandoned or renounced their distempered notions. It is as unnecessary to repeat that a few coherent sentences do not constitute the sanity of the intellect as that the sounding of one or two notes on a keyed instrument could ascertain it to be in tune. To establish its sanity, it must be assayed by different tests, and it must be detected to be as lucid on the subject of those delusions which constituted its insanity as on topics of a trival nature.”

Nothing could be plainer than these extracts from Dr. Haslam’s writings. They show that not only had his great experience led him to doubt the existence of lucid intervals, but that if such complete intermissions are to be detected, the examination must be searching and discriminative, and have especial reference to the delusions with which the patient has been affected.

Dr. John Reid,* one of the most eminent physicians Great Britain has produced, thus speaks of so-called lucid intervals :

“It is astonishing with what management and sagacity a maniac, when he is impelled by a sufficient motive, can keep the secret of his madness. I was once very nearly imposed upon by a patient of this description, who, by means of extraordinary art and exertion, had effected his escape over the barriers of his confinement, and, in order

* *Essays upon Hypochondriacal and other Nervous Affections.* American Edition. Philadelphia, 1817. p. 164.

to elude pursuit, solicited professional advice in favor of his sanity. A particular train of thought, which for a time lay silent and secret within the recesses of his mind, all at once, by an accidental touch, kindled into an unexpected and terrible explosion.

“Lucid intervals are subjects deserving of the particular study of the legal as well as the medical profession. There are, in fact, few cases of mania or melancholy where the light of reason does not now and then shine through the clouds. In forces of the mind, as well as of the body, there occur frequent intermissions. But the mere interruption of a disorder is not to be mistaken for its cure or its ultimate conclusion. Little stress ought to be laid on those occasional and uncertain disentanglements of intellect, in which the patient is for a time only extricated from the labyrinth of his morbid hallucinations.”

Dagonet,* referring to lucid intervals, says :

“The lucid intervals which constitute the period of remission present very variable characteristics, which it is important to appreciate according to the circumstances attending them. It may be said that up to a certain point they differ according to the form of mental affection to which they succeed and of which they preserve the traces in a greater or less degree. * * * * *

“The lucid interval is no more health than the intermission between two attacks of ague is a cure. However much restored the reason may apparently be, the individ-

* *Traité Élémentaire et Pratique des Maladies Mentales*, etc. Paris, 1862. p. 114.

ual is placed in a special situation, which the least circumstance may easily and instantaneously transform into one of disease. Doubtless the distinction is often difficult to establish; it belongs to the physician, and above all, to the physician who has devoted himself to the study of insanity, to fix the character, after an attentive examination, in certain special cases. Thus it is not rare to observe in asylums for the insane some patients, in the moments of remission in their affections, show themselves to be calm and rational to such a degree that it would be difficult to prove that they were at all in an insane condition. And yet, if they were to be left to themselves—if they were in any way to be subjected to the excitements of life, they would immediately return to their state of intellectual derangement.

“The importance of the question of lucid intervals cannot be denied, especially in its relation to legal medicines. ‘In pathology,’ says Wachsmutt, ‘periodical diseases are admitted to exist, which, without ceasing entirely as to their *intrinsic* nature, cease only during a certain time to produce *exteriorly* their ordinary phenomena, and in pathology, periodical maladies are especially those which concern the nervous system. Experience teaches that the disease lasts during the remission, and that the patient affected with a periodical mental disease is not restored to health during the lucid interval. He should not, therefore, have any legal responsibility.’”

Marcé,* whilst admitting the occurrence of intermissions in other forms of mental disease, says :

* *Traité Pratique des Maladies Mentales.* Paris, 1862. p. 652.

“Monomania has its moments of calmness or remission, but it never exhibits an intermission, properly so called, till the day of cure. The insane idea or series of insane ideas remain in the depths of the mind, to influence at all times and at all places the determination of an insane patient.”

In a review of Redfield's Law of Wills, Dr. Ray,* with his accustomed acumen and good sense, makes some remarks relative to the theory of lucid intervals, which fairly express the prevailing doctrine on the subject among the most intelligent physicians of the day.

He says :

“No phenomenon of insanity has played a wider part in medical jurisprudence than lucid intervals, so called, and no one, we may also say, has been more differently understood. And the fact is not surprising, for they indicate a phase of the disease which none but those who have been long and intimately connected with the insane can correctly appreciate. The descriptions of it in books serve to make the matter very clear, and leave the impression that lucid intervals are frequent occurrences and easily distinguished from other remissions of the disease ; and here lies the mischief, that of using a phenomenon which is complicated with many conditions not easily discernible, for an important practical purpose. It is to be regretted that the phrase, implying as it does a foregone conclusion, ever found its way into the law. It certainly has led to mistakes, and will lead to many more before it ceases to influence the decisions of courts. Our

* American Journal of Insanity, April, 1865. p. 515.

author [Judge Redfield] inclines to believe that there is no essential distinction between a lucid interval and a remission of the disease, and such we suppose to be the view generally entertained by those who are not specially acquainted with the subject. The idea of a lucid interval being a temporary cure, is now confined, we apprehend, to the writings of men whose notions of the disease have been derived from books rather than from the wards of a hospital. Like most other diseases, insanity is subject to remissions, more or less complete, and there is no more propriety in regarding them as recoveries than there would be in considering the intervals between the paroxysms of a quotidian fever as a temporary recovery. And if the disease remained in any condition whatever, it is mere presumption to say that the operations of the mind are entirely beyond its influence. This effect may not be very obvious, but the fact of its possible existence should render us cautious how we regard the acts of the insane during a lucid interval. In criminal cases the occasion will seldom arise, but in the matter of wills and contracts the decision will often depend on the speculative views that prevail on the subject."

Dr. Combe,* whose numerous works upon the mind and its derangement are well known in this country, expresses opinions to the same effect as those quoted. He writes :

"But, however calm and rational the patient may be during the lucid intervals, as they are called, and while enjoying the quietude of domestic society, or the limited

* Observations on Mental Derangement, Edinburgh, 1831. p. 221.

range of a well regulated asylum, it must never be supposed that he is in as perfect possession of his senses as if he had never been ill. In ordinary circumstances, and under ordinary excitement, his perceptions may be accurate and his judgment perfectly sound ; but a degree of irritability of brain remains behind which renders him unable to withstand any unusual emotion, any sudden provocation, or any unexpected and pressing emergency. Were not this the case, it is manifest that he would not be more liable to a fresh paroxysm than if he had never been attacked. And the opposite is notoriously the fact ; for relapses are always to be dreaded, not only after a lucid interval, but even after perfect recovery ; and it is but just, as well as proper, to keep this in mind, as it has too often happened that the lunatic has been visited with the heaviest responsibility for acts committed during such an interval, which previous to the first attack of the disease he would have shrunk from with horror."

Quoting other authorities and this passage from Dr. Combe, Dr. Ray * adds :

"With the views of these distinguished observers before us, what are we to think of the doctrine, that in the lucid intervals the mind is restored to its natural strength and soundness ; that it is capable of as great intellectual exertions and of holding as tight a rein over the passions ; that it is able to resist foreign influence and to act on its own determination with its ordinary prudence and forecast ; that, having thrown off the disease, it has

* A treatise on the Medical Jurisprudence of Insanity. 4th Edition. Boston, 1860. p. 377.

recovered its general habit, or that it has undergone a temporary cure? Sounder pathology was never written than is contained in the extract from Dr. Combe, and no physician who has been much conversant with the insane will be disposed to question its correctness."

The ideas which, after much observation and reflection, I have been induced to form in regard to so-called lucid intervals, are entirely in accordance with those enunciated in the extracts I have given from the works of some of the most distinguished physicians who have devoted themselves to the study of mental diseases. At the present day there does not appear to be any difference of opinion on this subject among skillful medical men. It is a well-recognized fact that all forms of insanity are due to structural changes which have taken place in the brain. These may be slight in some cases, and perhaps not always, without microscopical examination, discoverable after death. Still they do exist, and they continue to exist till the patient is altogether cured, and even then there is a greater tendency to a fresh outbreak than there was before the first disorder was manifested. A diseased brain will always produce a diseased mind. To assume that, because a patient, after a severe access of mania, extending perhaps over several days or months, gradually, or even suddenly, becomes calm or apparently rational, he is therefore, for the time being, reinvested with all the god-like qualities which the healthy human mind possesses, is most illogical and unscientific. Would it not be strange if there were not these occasional remissions? The brain can endure a great deal of fatigue, but fancy how racked, how weary, how thoroughly exhausted it must be with

the burning fancies, the rapid succession of ideas, the ravings which characterize the maniacal condition. There is no disposition to misinterpret the significance of remissions which occur in other diseases. No one thinks the epileptic is cured after he has had one fit and before the next; no one doubts that, unless the proper remedy be taken, the individual who has had a tertian ague will certainly have another paroxysm on the alternate day. The disease is still present, doing its work; but it does not manifest itself in the paroxysmal form.

Take the example of a patient suffering from cancer: the pain is at times most excruciating, but after it has lasted sufficiently long the nervous system yields, a state of repose ensues, there is a distinct remission, and, perhaps, even sleep follows. But it would be folly to assume on these accounts that the cancer has been cured; touch it, lay but the weight of a finger on it, and see how the poor wretch will scream with agony. So it is with the insane patient, during his so-called lucid interval. Touch the diseased chord in his thoughts, and his aberration becomes manifest to all. Damiens, who attempted the assassination of Louis XV. of France, was put to the most inhuman torture, and yet he slept on the rack, and was only awakened by a new means of torment.

The law of periodicity prevails throughout the whole of our organism, whether in health or disease. Nothing is continuous. After physical labor we require repose; after mental exertion we must rest. All diseases have their stages of exacerbation and remission. Fevers decline at one period of the day, and increase in violence at another. Even the victim of consumption has his

alternations of comparative ease, during which he hopes for recovery, and which deceive not only himself, but the inexperienced friends who surround him.

A case which is of striking application to the point under notice has recently come to my knowledge. A gentleman of this city became, during a period of great excitement, temporarily insane. After a not very long period of true mania he was apparently restored to reason, and was about resuming his business, when he conceived the idea of making his will. He sent for his lawyer and dictated clearly and fully all the provisions which he wished inserted in this document. His property was large, but he made his disposition of it in a manner that his legal friend thought rational, if not just. The will was signed, witnessed, and committed to the lawyer's hands for safe keeping. Soon afterward the gentleman had a relapse; he recovered, however, and was finally pronounced cured. Two years afterward, meeting the lawyer in the street, he requested him to come to his house that evening, as he wished him to draw up his will. His friend asked him if he desired to cancel the will already made, and which he had in his safe. "I have never made a will," replied the gentleman. "Yes," answered the lawyer; "I drew one up for you more than two years ago; you signed it, it was witnessed, and it is now in my safe." The gentleman was astonished. He had no recollection of the matter, and when the will was shown to him he expressed the utmost surprise and regret at some of the provisions which, as he said, were altogether different from those he would have made had he been of sane mind at the time. The will was destroyed and a new one exe-

cuted, differing essentially from that which he had dictated during his so-called lucid interval.

As we have seen, in monomania there are frequently paroxysms of true mania, during which the individual is oblivious on many subjects. He disregards the proprieties of life, both in language and actions, and may even attempt homicide or self-destruction. The paroxysms are periodical; there are distinct remissions, and the patient, to a superficial observer, appears to be sane. The delusion, however, which he entertains still exists. He may not exhibit it on all occasions; he may conceal it carefully so as to accomplish any end he may have in view; he does not even think of it constantly, but it is there, binding him in a thralldom from which there is no escape, and causing him to perform acts which in his sanity he would abhor. To make such a person responsible for his actions, even though committed during an apparent lucid interval, would be unjust; to invest him with the power to do injury to himself or others by recognizing the validity of his contracts or testaments, appears to be equally contrary to the principles of equity. We cannot tell to what point a delusion, which of itself is apparently harmless, will carry a monomaniac. Hadfield, who attempted the life of the king, imagined himself to be Christ, and his act was perpetrated solely in order (as he said) that he might be executed, and thus removed from the earth. An insane person may imagine, for instance, that he is George Washington; he may live a perfectly harmless life for years, indulging in this delusion to the prejudice of no one, and perhaps will be accounted by many a rational being on all other subjects, fully

responsible to the law for his acts, and able within the law to dispose of his property as he may please. But during all this time he may have been looking for Major André, and perhaps some day finding him in the person of an inoffensive citizen, he may deem it his duty to put a rope around his neck and hang him. Or, in making his will, he may refuse to recognize his own relatives, and may bequeath his estate to some one of the descendants of the great man he imagines himself to be.

Naturally the next point to be considered is the legal relations of monomania and lucid intervals. Upon this division of the subject I shall be as brief as possible, knowing full well that the learned counsel engaged on both sides of the case at issue are capable of presenting them with a degree of thoroughness to which I can lay no claim.

Previous to the case of *Greenwood vs. Greenwood*, already referred to, no recognition of the existence of partial mania or monomania, so far as testamentary capacity was concerned, was entertained by the English courts. In that issue, however, a verdict was given by the jury against the will, and therefore in favor of the partial insanity of the testator, who had disinherited his brother on account of a violent dislike he had conceived against him. So contrary, however, was this decision to the prejudices of the day, that upon instruction from the court, the jury, at a subsequent trial, sustained the will.

In the case of *Drew vs. Clark*,* the enlightened opin-

* Ray's Medical Jurisprudence of Insanity, p. 266. Also 3 Addam, p. 79. Also Wharton & Stille's Medical Jurisprudence, p. 18.

ion delivered by Sir John Nicholl, recognizing the existence of monomania, and setting aside the will of the testator who had disinherited his daughter, has influenced the action of the law both in England and this country. The testator, Scott, had acquired a great aversion to his daughter, who it was shown had never given any cause for this hatred. The court "Considering it proved that the will was the direct unqualified offspring of that morbid delusion concerning the daughter, thus put into act and energy, it was pronounced to be null and void in law. In this decision we see the prevalence of those more correct and profound views of insanity which have resulted from the inquiries of the last few years."

A case decided in 1822, in Kentucky, is to the same effect.* George Moore made his will in April of that year, and shortly afterward died. The validity of the will was disputed on the ground of unsoundness of mind of the testator. It was shown that about twenty-four years before his death he had had a dangerous fever, during which he imbibed a strong hatred against his brothers, who he imagined intended to injure or destroy him, though they had attended him through his illness, and never gave any cause for his suspicion. This antipathy continued till the day of his death, with a single exception, when he made a will in their favor, which he subsequently canceled. The court, in its decision, said, "that he cannot be accounted a free agent in making his will, so far as his relatives are concerned, although free as to the rest of the world. But however free he may have been as to other

* Ray's Medical Jurisprudence of Insanity, p. 268.

objects, the conclusion is irresistible that this peculiar defect of intellect did influence his acts in making his will, and for this cause it ought not to be sustained."

In 1848, in a case before the Privy Council, Lord Brougham * delivered a decision, which was concurred in by such eminent jurists as Lord Langdale, Dr. Lushington, and Mr. T. Pemberton Leigh, to the effect that an individual insane on one point was to be adjudged by the law insane on all. The importance of the views advanced by this eminent philosopher, statesman and lawyer, can scarcely be overestimated. That they are, if not actually correct, justified by all our knowledge of the human mind, I firmly believe. In the course of his remarks, Lord Brougham says: "It follows from hence, that no confidence can be placed in the acts, or any act, of a diseased mind, however apparently rational that act may appear to be, or may in reality be. The act in question may be exactly such as a person without mental infirmity might well do. But there is this difference between the two cases: the person uniformly and always of sound mind could not at the moment of the act have become the prey of morbid delusion, whatever subject was presented to his mind; whereas the person called partially insane—that is to say, sometimes appearing to be of sound mind, and sometimes of unsound mind—would inevitably show his subjection to the disease the instant the topic was suggested. Therefore we can with perfect confidence rely on the act done by the former, because we are sure that no lurking insanity, no particular, or partial, or occa-

* Wharton & Stille, p. 20.

sional delusion does mingle itself with the person's act and materially affect it. But we never can rely on the act, however rational in appearance, done by the latter : because we have no security that the lurking delusion, the real unsoundness, does not mingle itself with, or occasion the act." Whatever view may be taken of this opinion of Lord Brougham, it is a well-recognized principle, both in English and American law, that a person insane apparently upon one point only, is devoid of testamentary capacity so far as that point is concerned, and so far as it may be supposed to have influenced him.

In a very lucid and philosophical work, Mr. Phillips * says :

"Apparent sanity on some subjects is not conclusive proof that delusion on those particular subjects, and showing itself on particular occasions, does not exist. And it seems that in civil cases this partial insanity, if existing at the time of an act done, invalidates that act, though it be not directly connected with it. It has been said that where there is delusion of mind there is insanity ; as when persons believe things to exist which exist only, or at least in that degree only, in their own imagination, and of the non-existence of which neither argument nor proof can convince them, and which no rational person would have believed. This delusion may sometimes exist on one or two particular subjects, though generally there are other concomitant circumstances, such as eccentricity, irritability, violence, suspicion, exaggeration, inconsistency, and

* The Law Concerning Lunatics, Idiots, and Persons of Unsound Mind. By Charles Palmer Phillips. London, 1858.

other marks and symptoms which may tend to confirm the existence of delusion, and to establish its insane character."

Judge Dean,* in regard to the influence of monomania upon testamentary capacity, says:

"In 2 *Pothier on Obligations*, Appendix 24, is laid down, as we suppose, the true doctrine, by Mr. Evans, the translator. 'I cannot but think,' says he, 'that a mental disorder operating on partial subjects should, with regard to those subjects, be attended with the same effects as a total deprivation of reason; and that, on the other hand, such a partial disorder, operating only on particular subjects, should not, in its legal effects, have an influence more extensive than the subjects to which it applies; and that every question should be relevant to the point whether the act under consideration proceeded from a mind fully capable, in respect to that act, of exercising sound, free, and discriminating judgment; but in case the infirmity is established to exist, the tendency of it to direct and fetter the operations of the mind should be in general regarded as sufficient presumptive evidence, without requiring a direct and positive proof of its actual operation.'

"In accordance with these views, the rule or principle to be followed in reference to any act is—

"1. To establish the delusion, which must be entertained as true, and must be false in fact.

* The Principles of Medical Jurisprudence. Designed for the Professions of Law and Medicine. By Amos Dean, Counsellor at Law and Professor of Medical Jurisprudence. Albany, 1850. p. 571.

“2. To trace the act in question directly to the delusion, either as being actually produced by it, or so intimately connected with it as to lead to the presumption that it never would have occurred had not the delusion existed.”

In a case recently determined in this city, these principles were enforced by the court and carried out by the jury. The case referred to is that of Madame Jumel, who died several years since, leaving the bulk of a large estate to various ecclesiastical and charitable institutions, and disinheriting her relatives. On the 12th of the present month, the case was brought to trial before the Supreme Court in this city. It was shown in evidence that the testatrix was very old, and that she was subject to delusions of various kinds; among others, she conceived the idea that several of her relatives were trying to poison her, and she would refuse to take food which they gave her.

The court charged that if the testatrix was of unsound mind on account of these delusions, she was not capable of making a will.

The jury found that she was of unsound mind when she made the will.*

French works upon Medical Jurisprudence inculcate similar doctrines to those which now prevail in England and the United States. From one of the latest of these I translate the following passages:

* I base my details of this trial upon the phonographic report contained in the *New York World* of Nov. 13th, 1866.

Dr. Le Grand Du Saulle,* Physician-Expert to the Civil Tribunal of the Seine, says:

“Hallucinations are not an obstacle to testamentary capacity when they have been long existing, *when they have not exercised any influence on the conduct, when they have not perverted the natural affections*, and when the individual has always continued to fulfill his social duties. *But it is evident that the testament of one subject to hallucinations cannot be accepted as valid when he disinherits his family without motive, who erroneously considers his relatives to be his enemies*, who accuses them of a desire to poison him, of putting noxious substances into his food, of tormenting him by means of electricity, of throwing infected odors at him, etc., etc.

“Liberty of will cannot be exercised when the subject of delusions transforms in his imagination the words of his relatives into reproaches, injuries, or menaces, or who takes the persons of his friends for devils or monsters. Under these circumstances, as in all those where hallucinations or illusions exercise a direct and prejudicial influence over the acts, it is certain that the wishes of the person affected cannot be legally sanctioned. The first condition of every lawful act is wanting: the will is fettered.”

In a case tried before the Tribunal of the Seine, in which the testator, having conceived the idea that his brothers were inimical to him, had consequently disinherited them, the court rendered judgment as follows: †

* La Folie devant les Tribunaux. Paris, 1864. p. 146.

† Du Saulle, Op. Cit., p. 155.

“Whereas, the principle which prevails in the matter of testaments requires, as a necessary condition to the validity of an act of that nature, that the testator should be of sound mind, is absolute and without exception;

“Whereas, every aberration of the intellectual faculties, even when the same is of a partial character only, renders the person affected incapable of making a valid testament, especially when it is demonstrated that the alleged monomania or partial insanity has influenced the testator, in whole or in part, in the dispositions made in his will;

“Whereas, it is asserted by N—— brothers that at the time the testament was made, Jean Claude Marie N—— was under the influence of a partial mental aberration, which exercised such a power over his mind that it alone has determined the dispositions made in his will, to the exclusion of his natural heirs; which said allegations are sufficiently apparent to warrant the tribunal in admitting the truth of them to be established;

“It is ordered that MM. N—— brothers shall be allowed to set forth the proofs, as well by records as by verbal testimony, of the facts,” etc. “Judgment of the 21st of August, 1842.”

In another case quoted by the same author, the Court of Appeals of Bordeaux set aside the will of an individual who had imbibed a feeling of hatred for his brother, although he had manifested no other symptom of mental alienation.

The court took the ground that the apparent wisdom of a will is no proof of the sanity of the testator; for when, as in the case before it, the natural heir is not men-

tioned, it is always a matter of proof whether the exclusion is the act of a sound and healthy mind, or the work of a will disordered and under the irresistible influence of a monomania.

This concludes what I have to say relative to the law and science of monomania, as the same are acted upon and understood in Germany, France, England, and the United States at the present day. In the next place, I propose to consider in detail the circumstances in the case of the testator, James C. Johnston, which have induced me to arrive at the conclusion that at the time of the publication and republication of his will, and for some time prior to both events, and to the period of his death, he was not of sound and disposing mind.

PART II.

James C. Johnston, the validity of whose last will and testament is called in question, died in 1865; about two years after executing a will by which his natural heirs were excluded from any participation in his estate, and the whole of his property was devised to persons in no way connected with him, and with whom he had never been intimate.

The testator had been insane for fifteen years prior to the execution of this will, and his sister was similarly affected. His attacks of delirium were paroxysmal in their character, and in the intervals he would be of apparently sound and healthy mind. Over these attacks of

delirium, he had, as is common in insanity of this form, a certain amount of control. When persons before whom he wished to appear to advantage would approach him he would suppress his ravings, but would again break out in them when left alone or with those whose presence had become familiar to him. At times, too, after becoming thoroughly exhausted with his delirium, he would regain his calmness, beg pardon of those who had been with him, admit the existence of his insanity, and state that he ought to be carried to an asylum.

During his fits of delirium, he is known to have rushed violently around the grounds attached to his house, undressed, to have lacerated himself with a whip, to stray a quarter of a mile away from his house in his under-clothing, and to be brought back to his residence by friends who discovered him in this condition. Certainly two attempts at suicide were made: on one occasion opium was taken, in quantity sufficient to destroy life, but was ejected from the stomach before its action took effect. On another he was found in the woods half a mile from his residence, attempting to kill himself with a sword-cane.

Nor was his propensity to destroy life limited to his own existence, for he once attempted to shoot one of his relatives, for whom, up to a period which will be hereafter more specifically considered, he had always during the remissions of his insanity manifested the warmest feelings of regard. Here we have hereditary tendency to insanity, and actual paroxysms of mania alternating with periods of remission, during which the testator was apparently of sane mind. As yet no delusion in regard to his

relatives is distinctly shown to have existed; that there was delusion of some kind is very evident, for the attempt at self-destruction, and to kill a dear and attached relative, sufficiently shows that a morbid impression existed, impelling him to act as he did. It is beyond question that, had he succeeded in either endeavor, he would have been regarded by a coroner's jury in the one case and a jury of a court trying him for his life in the other, insane, and consequently not responsible for his conduct. The attempts at suicide show the existence of a delusion of which he himself was in some manner the subject. The insane never try to destroy themselves from sheer wantonness; there is always a motive—a false one it is true, but yet one of terrible power over their minds. There is always some great good to be obtained by self-destruction; some great evil to be avoided thereby; or it is done in obedience to imaginary commands which they are powerless to resist. What the impelling motive to this deed was in the testator's mind, is not altogether clear when these attempts are viewed alone, but when taken in connection with his effort to shoot Mr. James C. Johnston, Jr., with a pistol, and his subsequent violent antipathy to this gentleman and his family generally, there does not appear to be much doubt in regard to its nature. It is extremely probable that at this time he had acquired the delusion that some harm was impending over him, that his efforts at self-destruction were made in order to avoid this supposed injury, and that the attempt to kill J. C. Johnston, Jr., associated him in the testator's mind with this imaginary evil.

Now there is nothing forced or strained in this hypo-

thesis. It is one which is amply sustained by the records of psychological medicine, and one which is based upon many facts occurring in my own experience, and in that of others who have made the subject of suicide their special study. It affords the most rational explanation of the testator's conduct which can be offered, and on this account is entitled to additional consideration. There is more method in the conduct of the insane than the world generally supposes, and often as deep thoughts and as brilliant scintillations of genius are manifested within the walls of a mad-house as are contained in the books which are piled up in the libraries of the philosopher or statesman.

As I have said, insane persons frequently attempt suicide in order to escape some imaginary trouble or injury. Thus Brierre de Boismont,* whose opinions upon this and all other questions connected with mental pathology are worthy of respect, and whose opportunities for investigation have been so extensive, declares that of the insane persons who to his knowledge have committed suicide, sixty-nine were actuated by fear.

A gentleman of my acquaintance attempted several times to kill himself in order that he might escape from persons whom he imagined were endeavoring to poison him. He said he preferred to die by a bullet rather than by poison.

In the Salpetriere, the large establishment in Paris for pauper old women, and which contains over 1,500 insane females, a woman was pointed out to me who had made

* Du Suicide et de La Folie Suicide. Paris, 1856. p. 144.

many attempts upon her life, whose only motive was that she might escape the importunities of relatives who, as she imagined, were soliciting money from her. In the same hospital was another who had to be constantly watched to prevent her accomplishing self-destruction. She was fearful of being left alone, as she was under the delusion that all her friends had deserted her.

As we have seen, monomania is especially characterized by the abolition or perversion of those natural sentiments of affection for relatives and friends which all sane persons entertain. That this change had, in consequence of the extension of his disorder, taken place in the testator's mind, is not a subject even for doubt; his acts were of such a character as clearly to show the existence of this special form of derangement.

J. C. Johnston, Jr., the son of the testator's nephew, had been educated by him, brought up as his son, and, by a will made a few years previous to the one now sought to be established as valid, was made his principal legatee. After giving him his education, he was brought by the testator to live with him, about the year 1854. From that time to the 17th of March, 1863, the testator, when not under the influence of maniacal ravings, treated this gentleman with the utmost consideration and regard, and received in return the respect and love which a son should give to a father. The relations between the two were, in fact, those of father and son. The testator confided in him, was nursed and attended to during his illness by him, and would scarcely allow any other person to approach him at those times. The good feeling of the testator to J. C. Johnston, Jr., was extended to the latter's wife.

There were no jarrings, no quarrelings, no complaints of neglect. There was, in fact, nothing to disturb the harmony which existed.

Previous to the fall of Roanoke, the testator had written a letter, asking a relative, in case the United States forces approached, to afford an asylum to J. C. Johnston, Jr., and family, and stating that he, the testator, might himself be compelled to ask for a home. In this letter he expressed the utmost affection for J. C. Johnston, Jr., and his family, and also for the gentleman, Dr. E. Warren, to whom it was addressed, and who was nearly connected with the testator. This letter was written in March, 1863, only a few days previous to the one of the 17th, to which allusion has been made, and which will be more particularly noticed hereafter.

Up to the period last mentioned, the testator had always evinced the utmost affection for Mrs. E. Warren, a near relative, but who, by the will sought to be established, is entirely excluded from any participation in his estate. After the fall of Roanoke Island, in March, 1863, and when all were apprehensive in regard to the approach of the invading army, it was deemed advisable for as many of the women and children as could leave Edenton to seek greater security in distance. Acting in accordance with the advice of the testator, and with his full consent and approval, J. C. Johnston, Jr., on the 16th of March, left Edenton for the purpose of placing his family in a place where, in his opinion and that of the testator, they would be in greater safety. The parting was most affectionate on both sides, and the testator requested him to return as quickly as possible. On the evening of the

15th of March he is known also to have been on the best terms with Mr. J. C. Johnston, Jr., and his family.

Scarcely was his friend and relative, who had been as a son to him—who had borne with his infirmities, tended him in sickness, and been taught to regard the testator as his father—scarcely had he left the house ere the following letter was indited:

“HAYES 17th March 1863.

“MR. JAMES C. JOHNSTON, JR.

“Sir:—

“I have been a long time desirous to make to you the communication I now do, but did not do so as long as you & y^r wife were inmates of my house—but now that you are not, but by y^r own movement without any consent or advice from me or any information from you untill your arrangements were all made I feel no reluctance to communicate what I have long kept confined to my own bosom, because I did not wish to do anything which might appear rude in my own house. It is this, that with y^r wife’s arrogance assumption & presumption and y^r own servile subserviance to her & her family & my irritable and nervous temperament it will be impossible for us to be inmates of the same house. I therefore forbid you or your wife & her family ever again entering my house. I wish to have nothing to do with you or yours. To convince you of this my determination I have ordered all your things, & y^r wife’s found in my house to be packed up & sent over to Dr. Will Warren’s & deposited in one of the rooms & the key sent to Mr. James Norfleet by whom they will be delivered to y^r

order. I ask no explanation & will receive none, Mr. Badham is waiting for this, & I have not time to add more if I wished.

“JA. C. JOHNSTON.”

Here then we have the consummation of a plan which, with all the cunning of a monomaniac, the testator had, as he says, “kept long confined in his own bosom.” This assertion is doubtless true. He had brooded over his delusion, concealed it, written only a few days previously to Dr. Warren that he wanted Mr. J. C. Johnston to seek a safer home for his family, expressed in this letter the greatest affection for him, had himself urged Mr. Johnston to go, had on the evening of the 15th openly showed his affection, had parted with him kindly and begged him to return as quickly as possible, and then as soon as he has gotten him out of the house, with all a monomaniac’s self-complacency and glee he glories over the success of his schemes, ascribes a motive for wishing to get rid of him, which he at the time must have known to be false, makes the untrue statement that Mr. J. C. Johnston, Jr., had left his house without any advice or consent from him, and concludes by saying he asks for no explanation and will receive none. The letter is just such a one as a monomaniac would have been expected to write, and, taken in connection with the previous history of the testator, and of his relations with Mr. J. C. Johnston, Jr., and family, affords the strongest possible proof of his insanity. Shortly after his departure, Mr. J. C. Johnston, Jr., returned to Edenton, but was refused admission by the testator into his house, the testator refusing

to speak to him, and becoming violently excited, ordered him away, and never again to come on his premises.

The hatred which had been conceived for him and his family was even extended—as shown by numerous acts—to those who still saw fit to treat them with ordinary consideration and politeness.

On the 10th of April, the testator made his will. This is such an extraordinary document, and has so important a bearing on the point at issue, that I quote it entire, *verbatim*.

I, James C. Johnston resident in Chowan County, State of N° Carolina make this my last Will and Testament in manner following to wit: I give, devise & bequeath to my Friend M^r Edward Wood resident of Chowan Co and State N° Carolina, All my Estate both Real & Personal of what nature or kind soever that I have in the County of Chowan at the time of my death, including the Mills, house & lots and negroes now in the possession of Mr John Thompson, and for which he has a Lease not transferrable to any person. So also with regard to the Plantation on which G. J. Cherry lives for which he has a lease not transferrable to any other person, —To him, the said Edward Wood, *his heirs & assigns forever*. Subject to such disposition and instructions which I shall make in a *private letter* directed to him, & which he will find with this will. Trusting entirely to his honor & integrity to fulfill them so far as *circumstances* and his *convenience* and the *means & funds* in *his hands* will *permit*.

I give, also to the aforesaid Edward Wood all the

money he may find at my death, all my shares of Bank Stock in whatever State they may be located,—United State Stock on loans, North Carolina State Stock, Virginia State Stock and any stock of whatsoever kind soever of which I may die possessed, all Bonds & Notes of individuals and balance of rents due me,—I hereby appoint my said friend Edward Wood my sole Executor of all my Estate & unsettled business in the County of Chowan, without interfering or being interfered with by my other Exec^{rs} mentioned in this will except by advice and to be entirely free from any claims except my debts if any in the County of Chowan, & my funeral expense If any of my relation should undertake to prevent the establishment of this my last Will & Testament then it is my wish that they should be entirely cut off and deprived of any provision I may make for them or him, in the *private letter* I leave for my Executor Edward Wood, in whom I have entire confidence to do them justice according to the instructions contained in that letter, which I wish him to keep entirely private until he finds it perfectly convenient to meet my instructions. Secondly I give, devise & bequeathe to my friend Mr. C. W. Hallowell residing in Pasquotank County State of North Carolina for his great exertions in protecting & taking care of my property in that County. All my Estate both Real & personal of what nature or kind soever in the County of Pasquotank, To him his heirs & assigns forever subject only to the instructions I may give in a *private letter* I shall write him and will be found with this my last will. Having full confidence in his honor & integrity to fulfill the instructions in that letter which it is

my wish should be kept entirely secret until it is perfectly convenient for him to fulfill the instructions therein contained being governed by the circumstances of the times and the fund, and the means he may have in hand of mine.

I also give M^r C. W. Hallowell all the money or funds I may have in his hands after paying any debts I may owe in the County of Pasquotank at the time of my death and, I do hereby appoint my friend C. W. Hallowell my sole executor of all my estate & to settle all my business in the County of Pasquotank without interfering or being interfered with by the other Executors appointed to settle my business in other Counties If any of my relatives should endeavor to prevent this my last will & Testament from being duly established it is my wish that they or him be entirely cut off & deprived of any provision I shall make for them or him in the private letter I shall leave for my Executor C. W. Hallowell.

Thirdly, I give devise and bequeath to my firm & faithful agent M^r Henry J. Feutrill (for his fidelity and good management in taking care of & protecting my property in the Counties of Halifax & N^o Hampton, All my Estate both Real & personal of what nature and kind soever in the Counties of Halifax & N^o Hampton To him his heirs & assigns forever Subject only to the instructions and provisions I shall make in a *private* letter directed to him and which will be found with this my last Will and Testament. I also give to Henry J. Feutrill all the money & notes or bonds or amts due me and which he may have in his hands after paying any

debt which I may owe in the said Counties of Halifax & N^o Hampton and I do hereby appoint the aforesaid Henry J. Feutrill my Sole Executor of all my Estate & to settle all my business in the Counties of Halifax and Northampton not to interfere or be interfered with by my other Executors named and appointed by this will to act in other Counties and it is my wish that if any of my relatives should think proper to dispute or prevent the establishment of this my last Will & testament that they or he shall be entirely cut off and deprived of all provision I may have made for them in the private letter directed to Mr Henry J. Feutrill in whose integrity & honor I have entire confidence to do them justice according to my instruction in that letter & according to the circumstances of the times & the means & funds he may have in his hands of mine which Letter to Mr. Feutrill I wish to keep entirely secret until it is perfectly convenient to carry out my instructions.

JA C. JOHNSTON [Seal]

Thus after cool calm & mature deliberation & reflection I have made this my last will & testament in these times of revolution and anarchy when I know not what a day may bring forth & when I do not know whether I shall be worth half or any part of the Estate I now possess, when I die, for which reason I have made no specific legacies or devices but rely entirely on the integrity fidelity and moral Sense of my Executors appointed by this will to carry out my instructions and instructions contained in the *private letters* directed to each of them separately written with my own hand and enclosed in the

same envelope with this Will freeing them from legal restraint restrictions or exactions to which I do not wish them to be subjected, And further if any person or persons who have any expectations from me shall think proper to dispute this will or attempt to prevent it from being duly established, I request & direct my Executors to cut them off & deprive them of any Legacies or provision I may make for him or them in the *private* letters of Instructions I have left for my Executors appointed by this will.

All my life has been devoted to cultivating and improving my farms in Halifax Northampton Pasquotank and Chowan Counties that they may be continued in the same progress of improvement and that my negroes may be taken care of and that my Real and Personal Estate may not be divided and scattered to the four winds of Heaven & perhaps bot under the hammer of an Auctioneer or Sheriff for a division, I have placed them in the hands of persons, whom I know to be men of energy, honor & integrity. Tho' none of them are connect^d with me by blood marriage or otherwise I have a high respect for them for moral worth & great energy to carry out my wishes & instructions contained in my *private* letters to them. I, now make & publish this my last will and Testament written with my own hand to be construed *liberally* as to any errors in writing of Omissions or informality. Hereby revoking all former Wills by me made at any time heretofore.

The word G. J. Cherry interlined in the 13th line in the 1st page the word winds interlined on the 4th line in

page 6th were made before the signing sealing and publishing of this will.

In Witness Whereof I hereto Set my hand & Seal this 10th day of April in the year of Our Lord one thousand eight hundred & Sixty three (1863) April 10th

Signed sealed, & Published in Presence of

J. E. NORFLEET

JA C. JOHNSTON [seal]

H. A. SKINNER

J. R. B. HATHAWAY

The foregoing instrument of writing purporting to be the will & testament of JA C. Johnston was duly acknowledged and confirmed by him in my presence this 30th day of June 1863

WM. J. NORFLEET

That the annexed will may not be thought to be made under sudden in pluce & excitement, I this day 12th of Sep^r 63 acknowledge & confirm it not wishing any alteration what ever to be made therein. Witness my hand & seal 12th of Sep^r 1863

JA C. JOHNSTON [seal]

Test. TH S. SUMMERELL

WM. R. SKINNER

The letters to the legatees accompanying this will are rambling in their character, making many small legacies of money to relatives, and large ones to negroes, dispose of pictures, etc., are full of directions and advice, but leave everything to the wishes and convenience of the recipients, and are of course, therefore, possessed of no legal

value whatever. They are not such communications as a sane person would write to his legatee and executors.

Now the will which was signed and witnessed on the 10th of April, acknowledged on the 30th of June, and republished on the 12th of September, is a continuation of the act of the 17th of March. The connection between the two is sufficiently apparent. They are in fact so intimately related as to constitute one deed, extending from the 17th of March, when the letter of dismissal to J. C. Johnston, Jr., was written, to the 12th of September, and so on—as there was no change in the testamentary dispositions of the deceased—to the day of his death. If, therefore, the testator wrote his will during a so-called lucid interval, he must have been in the same sane state of mind on the 17th of March, and thereafter to the day of his death. If, however, he was not of sane mind when he wrote the letter of the 17th of March, he could not have been of sound and disposing memory at the time he signed, published and republished his will. During all this period there could not possibly have been any remission in the delusion he held on the 17th of March, because his acts of the 10th of April, the 30th of June, and the 12th of September, are directly confirmatory of the existence of that delusion, which he likewise continued to entertain to the day of his death. To affirm, therefore, that the will was executed during a “lucid interval” is absurd. It is self-contradictory. Even a sane act performed during a so-called “lucid interval” may be questioned; but an insane act, one which above all other possible acts showed the condition of the testator’s mind, is additional evidence of his continued insanity, and conse-

quently testamentary incapacity. If the testator, insane as he had undoubtedly been for many years, and insane as he certainly was on the 17th of March, had on any day subsequent thereto executed a will, in which, after expressing regret for his conduct to Mr. J. C. Johnston, Jr., he had made him his principal legatee, it would have been a sane act performed by an insane person, and consequently might have been properly disputed by the other heirs-at-law. Owing to the unfortunate mental condition of the testator, he had in my opinion no valid testamentary capacity whatever.

Suppose, for example, that the testator had on the 17th of March attempted to kill Mr. James C. Johnston, Jr., and suppose, further, that on the 10th of April, he had killed him, would it be contended by the legal authorities of North Carolina that the homicide had been committed during a "lucid interval," and would any jury in the State or in any other Christian community have found him guilty of murder? There is no doubt as to what would have been the charge of the court and the verdict of the jury, had he even been brought to trial.

Now, to carry out the analogy with facts, we have seen that on the 17th of March, the testator wrote an insane letter to James C. Johnston, Jr., and dismissed him from his house. This was the act of a madman. On the 10th of April, in continuance of the delusions which that letter shows prevailed in the testator's mind, he disinherits him. A sane act *may* show a sane mind; an insane act *always* shows an insane mind. If the will executed on the 10th of April had contained no evidence of the existence of the delusions which were present in the

testator's mind on the 17th of March, it might have been (although I think without sufficient reason) regarded as the will of a person of sound and disposing mind. As it does contain this evidence, it must be considered as the will of a person laboring under delusions, which delusions influenced his acts, and rendered them altogether without legal force. An insane act performed during a so-called "lucid interval" is the best possible evidence that no lucid interval existed.

But this is not all. It is true that the act of the testator disinheriting his relatives on the 10th of April, is a continuation of his conduct of the 17th of March, and therefore shows his continued insanity. In addition, however, aside from this direct connection, the will contains intrinsic evidence that at the time it was published and republished the testator was not of sound and disposing mind. Even if there had been no hereditary predisposition to insanity; even if there had been no paroxysms of delirium; even if there had been no attempts at suicide or murder; even if there had been no delusions; even if the letter of the 17th of March had never been written,—the will standing alone, as the act of a man apparently always sane, affords such strong presumptive evidence of insanity as in my opinion to warrant its being set aside.

In the first place, the ordinary character and disposition of the testator must be considered. It is well known that he was a descendant of one of the best families of the State, and connected with others equally high in the social scale. It is well known that he was proud of his ancestry, his connections, and his own position. It is very rarely the case that such persons leave their estates away

from their families. There are few feelings stronger in our breasts than the desire to perpetuate the wealth and the standing which have been acquired by our own exertions, or which have descended to us from ancestry we revere. An act such as the testator's is of itself *prima facie* evidence of mental derangement. It is an unnatural, motiveless act, even in the absence of delusion, and as such of great importance in determining the existence of insanity.

Taking the will of the testator and subjecting it to that critical examination which, if the will of a person of sound and disposing mind, it ought to be able to bear, we find that in the first paragraph, in which, in general terms, he gives, devises, and bequeaths to Mr. Edward Wood all his real and personal property, situated in Chowan county, is contained a condition which the testator in the very next sentence rescinds. The estate is given "subject to such disposition and instructions which I shall make to him in a *private* letter directed to him, and which he will find with this will." Then, in direct contradiction to this stipulation, he trusts "entirely to his honor and integrity to fulfill them so far as *circumstances* and his *convenience* and the *means and funds* in *his hands* will permit."

Turning now to his letter to Mr. Wood, which is first made of binding force, and is then rendered entirely nugatory, we find that his first wish is to provide for "my faithful servant, Aaron, and his family, who has been true to me always, in sickness and in health, by day and by night. I have never known him to tell me a lie, or to take anything whatever, without leave; I have trusted

him with everything; he has carried my keys, and I have never missed anything." He then requests Mr. Wood to emancipate his faithful servant, to give him his clothes, watch, \$250 in gold, and \$5,000 besides, and all that is left to the *convenience* of the legatee, and is of no binding force whatever. It is inconceivable that a sane person would act thus in regard to one who, as the testator himself says, was more faithful to him than any other person, black or white. I have merely selected this request as an example; of course all the rest have no more legal value, and many of them are of a character which, had the testator been of sound mind, he would have made legally binding.

In the next place, after appointing Mr. Edward Wood his executor so far as affected his property in Chowan county, he is apprehensive that his relatives will dispute the will; and in case they do, he wishes them cut off from all the provisions made for them in the private letter addressed to Mr. Wood. In this we perceive the consciousness that an act was being committed which the relatives would probably not very quietly submit to. *This direction is given to each of the other legatees (although in the letter to Mr. C. W. Hollowell no reference is made to his relatives), and is then again repeated after all his dispositions have been made.*

In regard to the other two legatees, there is the same subjection to conditions, which are immediately made of no force by their being left to the convenience of the persons upon whom they are imposed.

The re-affirmation of the will on the 12th of September was a most singular act, and one which, under the

circumstances, is calculated of itself to excite grave suspicions in regard to the sanity of the testator. There is still the thought uppermost in his mind that his efforts to disinherit his relatives may not succeed, and hence, with all the acuteness of a monomaniac who is governed by one idea, and who does not believe that these exhibitions are evidence of his insanity, he again enforces the ruling delusion of his mind.

In the testimony taken by the Commissioner, the witnesses for the plaintiffs lay great stress upon the assertion that the testator knew what his property was and to whom he was giving it. In the present case, it is a matter of no consequence at all whether he did or did not. It is not alleged that the deceased had a *weak* mind—that he was affected with dementia or idiocy. It is contended that he was subject to a delusion, and that he was not free to act as he would have done had he not been so governed. When, from disease or old age, a person has failed in intellectual power, it may be sufficient to establish the validity of his acts if it is shown that he was aware of the character and extent of his property, and knew to whom he was bequeathing it. When there is a perverted intellect, this knowledge does not in the slightest degree give validity to his will. A feeble-minded person, who possesses enough knowledge to know that in order to get rid of an enemy he has only to point a loaded pistol at him and pull the trigger, ought to be held responsible for his act. An insane person knows these facts well; but if he commits such a deed under the influence of a delusion which he cannot resist, he ought not to be held respon-

sible. In the one case, the mind has not lost power to act; in the other it has lost the power of restraint.

With the following resumé, I conclude the expression of my views in regard to the testamentary capacity of the late James C. Johnston :

1. That there is a form of insanity, known as monomania, which is characterized by a perversion of the understanding in regard to a single object or a limited series of objects.

2. That one of the most prominent features of this species of insanity is a morbid feeling of hatred to friends and relatives, and a disposition to do them injury.

3. That it is especially a symptom of monomania to imbibe delusions which exercise a governing influence over the mind of the affected individual, and force him to the commission of acts which in a state of sanity he would not perpetrate.

4. That the monomaniac has power to conceal his delusions, and to arrest the paroxysms of delirium to which he may be subjected.

5. That the testator James C. Johnston, was affected with monomania; that he had conceived a dislike to his relatives; that he was subject to delusions in regard to them; that he was, in consequence, not free to make a will such as he would have made had he been sane; and that he had power to conceal his delusions and to control his paroxysms of delirium.

6. That there could not possibly have been a lucid interval when the will was written, signed, acknowledged, and re-affirmed, because all these acts show a continuance of the delusions under which the testator labored. Insane acts can never establish the existence of lucid intervals.

7. That therefore he was not possessed of testamentary capacity; and that consequently the paper dated the 10th of April, 1863, and re-affirmed the 13th of September of the same year, is not his last will and testament.

APPENDIX.

POINTS OF JUDGE A. P. MERRIMON'S CHARGE TO THE JURY IN THE JOHNSTON WILL CASE.

1st. Under our laws, the late James C. Johnston had the right to dispose of his property, both real and personal, as he would, by deed or will, if he was subject to no mental disability.

2d. It is admitted that the script propounded as the last will and testament of the late James C. Johnston was sufficiently executed on the 10th day of April, A. D. 1863, and on the 12th of September, A. D. 1863, by him to make sane his will, if he had that degree and character of mental capacity required by the law to make a will; and the Court charges the Jury that the script was sufficiently executed in matter of form, if they believe the evidence touching the execution of the same.

3d. Then the issue submitted is, did the alleged testator have sufficient mental capacity, in degree and character, to make his will on the 10th of April, A. D. 1863, and on the 12th of September, 1863?

4th. It is objected to the script propounded, that the alleged testator did not have such mental capacity. The caveators so insist, and the burden of the proof of this allegation rests on them, and they must satisfy the Jury that at the time he was afflicted with such mental disqualification recognized by the law as incapacitated him to do this important act.

5th. The caveators object to the script on the ground that the alleged testator, at the time of the execution of the script, was afflicted with *partial insanity*, technically called *monomania*; that he had the insane delusion that his relations had abandoned him, and that they were utterly unfit and incompetent to manage and preserve his estate; and that the script sought to be established as his will is the result and offspring of such delusion, and therefore is no will, but an absolute nullity.

6th. It hence becomes important for the Jury to have a correct notion of what is meant by insanity, and especially partial insanity. It

is extremely difficult, if, indeed, it be possible, to give any very precise and satisfactory definition of insanity. It is so varied in its character, so diversified in its operations and effects upon the same and different persons, that no exact terms can be used to sufficiently compass its essence and character; it is rather to be described and explained than defined. The common and popular notion of insanity, that it means only that the person afflicted with it is a raving maniac, or that the light of the mind is utterly extinguished, and there exist only fatuity, and that otherwise every person is sane, is very erroneous, and falls short of the truth. Many persons sadly afflicted with mental disease appear, in some cases generally, and in others at intervals, to the common observer to be perfectly sane; indeed, it often exhibits itself in modes and forms so subtle that it almost eludes the observation of the most capable and expert observers and physicians. Mere strangeness of conduct or eccentricity of action does not imply insanity or unsoundness of mind. A perfectly sane man may be eccentric, peculiar in manner and actions, but he is aware of his peculiarities, and acts strangely and in his peculiar course from choice, and in disregard of what is generally thought as proper in manner or action; his conduct is not prompted by a diseased brain. But insanity means a diseased, a *morbid* mind or brain. Unsoundness of mind is a disease, and for the purpose of the case now before the court it will be sufficient to say that insanity or unsoundness of mind means such morbid disease or impairment of mind or brain as destroys the free and natural exercise of the *will*. This is insanity.

7th. It is insisted that the alleged testator was afflicted by *partial insanity*, or to speak more technically, with *monomania*. Partial insanity or monomania, is such disease or morbid impairment of the mind as destroys the free and natural operations of the will in regard to some particular subject or class of subjects. Although the whole brain may be to some extent affected, the morbid disease destroys the free operation of the mind towards a particular subject or class of subjects;—in regard to other subjects, the sufferer may have no diseased or morbid affection; towards other subjects he may be perfectly sane and act rationally, and with the most perfect propriety. In partial insanity the disease is exhibited exclusively upon particular subjects. This species of insanity is generally accompanied with insane delusion, and it is insisted that the alleged testator had such a delusion, and that the delusion operated in such a way as to destroy his testamentary capacity in the execution of the script. By an insane delusion is meant a persistent and morbid belief in supposed facts, which have no real existence, except in the perverted and distorted imagination of the sufferer, and a persistent and morbid belief in the existence of such supposed facts, against all evidence and probability to the contrary; and he acts and conducts himself on such supposed facts, however, logically upon the assumption of their existence. This is insane delusion, and delusion in this sense is insanity. A person so dis-

eased, is essentially insane, mad on the subjects embraced by the delusion, although on all other subjects he may reason with perfect accuracy, and act and speak like a sane man. To illustrate: a man may believe himself to be the Emperor of France, or that he is the Christ. He is neither, but he persistently believes that he is the one or the other; he cannot be convinced to the contrary; he so believes against all evidence and argument; he acts and conducts himself upon the belief, and he is in this respect essentially insane, and the person while entertaining such delusion, might reason logically, and act like a rational man about all things apart from the delusion.

Indeed, in the case stated, the sufferer might reason correctly about himself as emperor. Monomaniacs not unfrequently reason correctly from false premises. But it must not be understood that mere eccentricity of conduct, harshness of temper, revengefulness of heart, or a depraved, cruel, and malicious disposition, implies insanity. Such is not the fact. Here there is no disease. These characteristics might, under some circumstances, be evidence of insanity, but, in and of themselves, they do not imply a mental disease.

8th. Now let us apply these general principles to the case before the court. If the alleged testator, James C. Johnston, on the 10th of April, A. D. 1863, and on the 12th of September, A. D. 1863, was afflicted with insane delusion, as I have defined it to be, in respect to his relations who would naturally have been the objects of his testamentary bounty; if he had, as alleged by the caveators, a morbid and insane belief, an insane delusion that his relatives had abandoned him, and that they were utterly unfit to preserve his great property; and if the script propounded was the result and offspring of such delusion; if the script proceeded from such insanity, then the jury should find that the script is not his last will and testament.

9th. But on the other hand, if the jury should believe that the alleged testator was not, at the time indicated, laboring under such insane delusion; if he was not insane, as alleged, although the disposition of his property made by him may seem to be harsh, unkind and unnatural towards his relations, and though he may have made such disposition out of prejudice against them, then they should find that the script is his last will and testament.



